

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

JUN 1 1998

In the Matter of)	
)	
Amendment of Section 73.202(b))	RM No. _____
Table of Allotments)	
FM Broadcast Stations)	
(Dresden, Tennessee and)	
Glasgow, Kentucky))	

To: Chief, Allocations Branch

OPPOSITION TO PETITION FOR RULE MAKING

Heritage Communications, Inc. ("HCI"), licensee of Station WGGC(FM), Glasgow, Kentucky, by its counsel, hereby submits its opposition to the "Petition for Rule Making" of Thunderbolt Broadcasting Company ("TBC"), licensee of Station WCDZ(FM), Dresden, Tennessee, filed on May 1, 1998 ("Petition"). In its Petition, TBC requests the following: substitution of Channel 236C3 for Channel 236A at Dresden, Tennessee; modification of the license of WCDZ(FM) to specify operation on Channel 236C3; an involuntary downgrade of Channel 236C to Channel 236C1 at Glasgow, Kentucky; and modification of the license of WGGC(FM) to specify operation on Channel 236C1. HCI states that it opposes the downgrade of its class of channel. In support hereof, HCI states as follows:

BACKGROUND

1. On November 20, 1995, TBC filed an application to upgrade its facility from Channel 236A to Channel 236C3 pursuant to the Commission's one-step processing rules. See 47 C.F.R. §§ 73.203(b) and 73.3573. In view of the fact that the application did not specify a non-short spaced

No. of Copies rec'd

List A B C D E

025
MMB

allocation reference point, TBC requested a waiver of these rules. The waiver request was denied by a letter from the Assistant Chief, Audio Services Division on September 27, 1996. Reference 1800B3-RPC. The denial was affirmed by the Commission by Memorandum Opinion and Order (“MO&O”), 13 FCC Rcd 6959 (1998). A petition for reconsideration was filed by TBC on May 1, 1998 and is currently pending. During its pursuit of the waiver request, TBC asserted that Station WGGC constructed its current facility in 1987 with an antenna height center of radiation below 300 meters and therefore should be downgraded to a Class C1 channel. In addition, on September 16, 1997, TBC separately filed a “Request for Commission Action to Downgrade the Facilities of WGGC(FM), Glasgow, Kentucky to Reflect its Actual Height” pursuant to Section 1.41 of the Commission’s Rules. Finally, on May 1, 1998, TBC filed this Petition seeking to upgrade WCDZ to Class C3 facilities and downgrade WGGC to Class C1 facilities.

DISCUSSION

2. In the Petition, TBC disputes WGGC’s class of channel and seeks to involuntary downgrade WGGC despite the fact that such action has already been rejected by the full Commission in the MO&O, supra, at note 4. There the Commission stated that the proper forum for consideration of TBC’s complaint concerning WGGC’s actual antenna height is at the Enforcement Division of the Mass Media Bureau. Id. Since any allegations of insufficient antenna height would be addressed in the context of a complaint, TBC’s Petition should be summarily dismissed.¹

1. In response to WGGC’s complaint, HCI has demonstrated in great detail that WGGC’s antenna height meets the 300 meter requirement. Accordingly, HCI does not believe it necessary to reiterate the basis for its conclusion here.

3. In addition, TBC cites no precedent for an involuntary downgrade of WGGC. Indeed, the Commission has consistently denied changing an existing facility without the express consent of the licensee. In Asheville, N.C., 36 RR 2d 810, 815 (1976), the Commission stated that it would not authorize a new FM channel that necessitated the move of an existing station in order to meet spacing requirements “absent an unusually strong and compelling showing that the public gains achievable are sufficient to overcome concern with the ensuing impact upon the affected station and the public.” See also Greenville, TX, 6 FCC Rcd 6048 (1991) (stating that although § 1.420(i) of the Commission’s rules allows a licensee to seek a new community of license, it is not intended to permit third parties to change the community of license of another party’s station (noting that the licensee had no desire to change the community of license for its station)); Columbia, Jamestown, and Smiths Grove, Kentucky, 50 RR 2d 236, 237 (1981) (upholding a Report and Order that denied an FM assignment where the licensee whose transmitter would be required to move did not agree to make such a change, noting that “the consent of the affected licensee is critical to [FCC] approval of a new assignment, absent compelling countervailing factors.”).

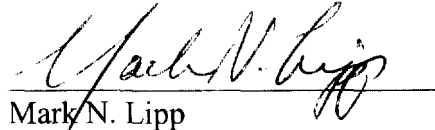
4. Due to HCI’s opposition to the downgrade of WGGC, TBC’s Petition should be denied as contrary to Commission policy and precedent.²

2. HCI notes that it filed an FCC Form 301 application on May 13, 1998 (File No. BPH-980513ID). The application seeks to increase the tower height and the antenna height center of radiation for WGGC by 40 feet. As a result, the radiation center’s height above average terrain (“HAAT”) will be 313.8 meters, which is undeniably above the minimum HAAT for Class C stations as set forth in the Commission’s rules. The application reflects HCI’s desire to increase the facility to the greatest extent feasible. HCI’s decision to increase the tower for WGGC was made for reasons independent of TBC’s request to downgrade WGGC.

Respectfully submitted,

HERITAGE COMMUNICATIONS, INC.

By:

A handwritten signature in cursive script, appearing to read "Mark N. Lipp", written over a horizontal line.

Mark N. Lipp

Kathrine L. Calderazzi

Shook, Hardy & Bacon, LLP

801 Pennsylvania Avenue, NW

Suite 600

Washington, DC 20004

(202) 452-1450


June 19, 1998

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary with the law firm Shook, Hardy & Bacon, LLP, do hereby certify that on this 19th day of June, 1998, I have sent via first class mail, postage prepaid, the foregoing "OPPOSITION TO PETITION FOR RULE MAKING" to the following:

- * Sharon McDonald
Federal Communications Commission
Allocations Branch
Room 569
2000 M Street, NW
Washington, DC 20554

John F. Garziglia, Esq.
Patricia M. Chuh, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, NW
Suite 200
Washington, DC 20006
(Counsel to Thunderbolt Broadcasting Company)


Lisa M. Balzer

*Hand Delivery